IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06/08/2004

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.P.No.13165 of 2004
and
WVMP.Nos.1160 and 1268 of 2004
WPMP.No.15383 of 2004

1. C.Parthiban
2. Selvi D.Akila .. Petitioners

-Vs-

1.Dr.K.Meena
Convener, Vice-Chancellor
Committee
Bharathidasan University
Palakaliperur
Trichirapalli 620 024.

2.Bharathidasan University
rep. by its Registrar
Bharathidasan University
Palakaliperur
Trichirapalli 620 024.

3.Dr.R.Jayaraman
Professor
Department of Chemistry
Bharathidasan University
palakaliperur
Trichirapalli 620 024.

4.Dr.S.Palanisamy
Reader and Head (now under
Suspension)
Department of Social Work
Bharathidasan University
Palakaliperur
Trichirappalli 620 024.

5.R.Sridhar
ASO (now under suspension)
Department of Social Work

Bharathidasan Univesity
Palakaliperur.
Trichirapalli 620 024.

6.Dr.V.Sethuramalingam
Lecturer
Department of Social Work
Bharathidasan University
Palakaliperur
Trichirapalli 620 024.

7.K.Murugesan
Attender/Lab Attender
Formerly at Dept. of Social Work
and at present at Department of
Bio-Technology
Bharathidasan University
Palakaipuram
Trichirapalli 620 024. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Declaration, as stated therein.

For Petitioners : Mr.AR.L.Sundaresan
For Respondents : Mrs.D.Geetha for R2
Mr.G.Ethira julu for R4
Mr.Pandian for R5 and R6.

:ORDER

This writ petition has been filed for the issuance of a writ of Declaration, declaring the enquiry which is sought to be conducted by the 3rd respondent herein as a one member Enquiry Officer, into the charges leveled against the respondents 4 to 7 herein as incompetent, void, wholly without jurisdiction.

2. This writ petition has been filed by one C.Parthiban, father of one of the complainants and by another complainant Akila. There are two more complainants given complaint against respondents 4 to 7 about some sexual harassment. On that complaint, a four member committee headed by the first respondent, enquired into the matter and filed a report. Accepting that report, departmental proceedings have been initiated against respondents 4 to 7. The present writ petition has been filed by the complainants for the reason that notice has been given dated 12.04.2004 whereby it is stated as follows:
"During the enquiry, the Enquiry Officer may ask the complainants and the respondents to present the complaints and arguments again, point by point, along with any material evidence available, such as (i) research notebooks, written manuscripts, corrected parts of the thesis/dissertation/project report, TC and Conduct Certificates, certificates of the UG course, copies of any other document related to the complaint from the complainants and

(ii)attendance registers for MSW and M.Phil courses during the last three years, despatch notebooks for 20 00-2003, copies of TC/Conduct Certificates given to students, and any set of correspondence about students and Research Scholars regarding sending them for projects/field work, copies of testimonials given to students and scholars from 2000 and any other relevant material from the respondents."

3. Mr.AR.L.Sundaresan, learned counsel for the petitioners submitted that the complainants are only witnesses and by this order, they are directed to produce those documents referred therein. Further, the learned counsel for the petitioners submitted that the enquiry conducted by the four member committee is sufficient and based on that, final order can be passed and there is no need to conduct another enquiry headed by a single individual.

4. This argument of the learned counsel for the petitioners is not acceptable inasmuch as the four member committee was appointed only to find out whether there is any prima facie case.
5. As per the Judgment reported in Vishaka Vs. State of Rajasthan (AIR 1997 SC 3011), the Honorable Supreme Court has laid down various guidelines. In that, in guidelines No.6 and 7, it is pertinent for the 'Complaint Mechanism' and 'Complaints Committee'. Pursuant to this direction, the four member committee had been appointed as ' Complainants Committee' and it has given a finding that there is a prima facie case against the respondents/delinquent officers. Once it is satisfied that a prima facie case has been made out against the respondents/delinquent officers, it is the duty of the employer, the University herein to initiate departmental proceedings and that is what is done in this case by appointing an enquiry officer and departmental enquiry has been initiated. In the departmental enquiry, the complainants are only witnesses. They have no obligation to produce any documents or materials to support the charges. The charges that are leveled against the respondents have to be proved only by the department namely, the University. But, the University directed the witnesses, namely the complainants herein, to produce those documents. In so far as this direction is concerned, this cannot be legally enforceable and hence this direction is scraped.

It is for the authority to prove the charges in the enquiry in accordance with the Rules and to give a finding. Based on the finding, department shall take further action in accordance with law.

6. In the result, the writ petition is disposed of with the above directions. Consequently, connected WVMPs and WPMPs are closed. No costs.

Index :yes
Internet:yes
ksr
To
1.Dr.K.Meena
Convener, Vice-Chancellor
Committee

Bharathidasan University
Palakaliperur
Trichirapalli 620 024.

2. The Registrar
Bharathidasan University
Palakaliperur
Trichirapalli 620 024.